

REMARKS

Upon receipt of this response, the Examiner is respectfully requested to contact the undersigned representative of the Applicant to arrange a telephone interview concerning the inventive merits of this application.

Claims 15-16, 18-19, 21, 27, 29-30 and 32-36 are rejected, under 35 U.S.C. § 103, as being unpatentable over United States Patent No. 5,165,400 (Berke '400) in view of United States Patent No. 6,277,144 (Tomic-Edgar '144). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks.

Berke '400 has been previously discussed at length in the responses filed December 12, 2007 and April 6, 2007. As acknowledged by the Examiner on page 2 of the March 31, 2008 official action, Berke '400 fails to disclose that one layer of the blanket has a portion of its surface formed of pervious material so that air is delivered to the patient receiving space via the entire surface of the pervious material. Berke '400, instead, discloses a hyperthermia article comprising a general U-shaped hollow body having sets of air holes spaced about a portion of the surface of the article. The air holes allow air to pass through the otherwise impervious surface layer. Some potential problems of such air holes are discussed in the background section of the Applicant's specification. One such problem is the "jetting" of air, which leads to unwanted cooling of the patient.

Next, the Examiner applies Tomic-Edgar '144 and asserts that this reference teaches the feature of the warm air being delivered via "the entire surface of the previous material." The Applicant respectfully disagrees with this assertion. It is respectfully submitted that Tomic-Edgar '144, in fact, adds little or nothing to the disclosure of Berke '400. As can be clearly seen in the drawings--especially Fig 4A--and described, in particular, in column 3 lines 5-16, the thermal conditioning apparatus is constructed of a first material layer 110 and a second material layer 120 of non-permeable material. It is in fact preferable that the layers 110, 120 provide the necessary non-permeability such that the apparatus is inflatable. To deliver the thermally conditioned air to the patient, the apparatus includes plurality of orifices 130 (see column 3, lines 29-31). See also column 4, lines 55-58, which state that the "thermal medium is delivered to the patient via the plurality of orifices 130 formed in the left extending portion 106 and the right extending portion 108".

Further, in column 6, the preferred embodiment of the apparatus is described as being constructed of a first material layer 110 and a second material layer 120. The first material layer 110 in this embodiment includes an external surface layer 400 and a coating

layer 410, which is again described as being constructed of "any of non-permeable material to allow for inflation" (emphasis added, col. 6, lns. 59-61). The first material layer 110 of this embodiment also contains orifices 130 for delivering air to the patient, however for the sake of clarity have been omitted from Fig. 4B.

The Applicant asserts that with regard to the issues as stated above and in the specification there is no difference between Berke '400 and Tomic-Edgar '144. That is, both teach an apparatus having a layer made of an impermeable material with orifices to deliver air to the patient. By having a similar construction, the devices of both Berke '400 and Tomic-Edgar '144 have similar problems such as the "jetting" effect created by the air passing through the orifices resulting in the problems previously discussed in detail during prosecution of the present application.

The Applicant contends that as Berke '400 and Tomic-Edgar '144 are very similar apparatus, there appears to be no motivation to combine their teachings with one another in the manner alleged by the Examiner. Moreover, even if Berke '400 and Tomic-Edgar '144 were properly combinable with one another--and the Applicant adamantly denies this--there is still no teaching, suggest, disclosure or hint from the applied combination of essential features as presently recited in the pending claims. That is, neither Berke '400 and Tomic-Edgar '144 in any way teaches, suggests or discloses a pervious material by which warmed air may be delivered over the entire surface of the pervious material. Specifically, the claims of the application include the limitation of "the blanket [having] a portion of its surface formed of previous material so that the warmed air is delivered to the patient receiving space via the entire surface of the pervious material."

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejections should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the Berke '400 and/or Tomic-Edgar '144 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit

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substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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